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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,716	03/14/2000	Bryan W. Wolf	6671.US.01	8310

25755 7590 07/15/2003

ROSS PRODUCTS DIVISION OF ABBOTT LABORATORIES
DEPARTMENT 108140-DS/1
625 CLEVELAND AVENUE
COLUMBUS, OH 43215-1724

EXAMINER

CHOI, FRANK I

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 07/15/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/524,716

Applicant(s)

WOLF ET AL.

Examiner

Frank I Choi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18,19,22,25 and 28-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18,19,22 and 25 is/are allowed.
- 6) ☒ Claim(s) 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/30/2003 has been entered.

Allowable Subject Matter

Claims 18, 19, 22, 25 appear to be allowable.

Claim Rejections - 35 USC § 103

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Paul et al. (U.S. Pat. 5,292,538) in view of in view of Kaufman (U.S. Pat. 5,843,921) for the reasons of record relative to claims 6-17, 20,21,26,27 and the further reasons below.

Paul et al. teaches a carbohydrate source comprising about 5-45% fructose and about 55-95 % glucose polymers which is assimilated immediately upon ingestion and compositions containing said carbohydrate source, lipids, proteins, minerals and vitamins (Column 4, lines 30-43, Column 9, lines 56-68, Column 10, lines 56-68, Column 11, lines 1-44, Column 12, lines 1-44, Formulations I-VII). It is taught that glucose stimulates insulin whereas fructose does not

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require insulin, promotes a more rapid emptying of the stomach such that there is a reduced feeling of bloating and more rapid delivery of nutrients (Column 3, lines 53-65).

Kaufman teaches that fructose and slowly metabolized complex carbohydrate, such as uncooked corn starch, helps to stabilize glucose levels and that fructose can be used as a sweetener in compositions intended for consumption by persons suffering from diabetes and an example containing fructose, corn starch, polydextrose, fat sources and protein source is taught which was effective in reducing the incidence of fluctuations in glucose levels and hyperglycemia after eating. (Pages 4-12). It is taught that the composition contains about 10-25% calories from fat and 10-25% calories from protein and about 50-75% calories are from carbohydrates (pg. 7).

The difference between the prior art and the claimed invention is that the prior art does not expressly disclose a method of providing nutrition to a individual with diabetes or for blunting the postprandial glycemic response by enterally administering a composition containing fructose and glucose polymers. However, the prior art amply suggests the same as it is known that fructose is suitable for use as a sweetener in composition intended to be consumed by diabetics. Further, it would have been well within the skill of and one of ordinary skill in the art would have been motivated to add lipids, minerals, vitamins and other nutrients as needed, including amounts within the scope of the claimed invention, depending on the nutritional needs of the diabetic patient. Finally, one of ordinary skill in the art would have expected that the Paul et al. compositions would be suitable for use in diabetics as said compositions contain fructose and glucose polymers as the primary carbohydrate source instead of glucose.

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Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

Conclusion


A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier numbers for accessing the facsimile machines are (703) 308-4556 or (703) 305-3592.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (703) 308-0067. Examiner maintains a flexible schedule. However, Examiner may generally be reached Monday-Friday, 8:00 am – 5:30 pm (EST), except the first Friday of the each biweek which is Examiner's normally scheduled day off.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Mr. José Dees, can be reached on (703) 308-4628. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (703) 308-1235 and (703) 308-0198, respectively.

FIC

July 14, 2003



JOHN PAK
PRIMARY EXAMINER
GROUP 1600